

REMARKS/ARGUMENTS

In response to the Office Action mailed May 15, 2007, Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claims 1 and 9 are amended, no new claims have been added and claims 4-8 have been cancelled without prejudice so that Claims 1, 2, 3 and 9 remain pending. No new matter has been introduced.

Claim 8 was rejected under 35 U.S.C. §112, second paragraph. Claim 8 has been cancelled without prejudice; accordingly, the rejection is now moot.

Claims 1–6 and 9 were rejected as being anticipated by U.S. Patent No. 6,471,980 to Sirhan et al (Sirhan). This rejection is respectfully traversed.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a single prior art reference. Therefore, if it can be shown that there is one difference between the claimed invention and what is disclosed in the single reference, there can be no anticipation.

Sirhan discloses the intravascular delivery of mycophenolic acid for minimizing and/or reducing restenosis and hyperplasia after intravascular intervention. The device may comprise a stent having multiple layers of polymers and drugs, including rapamycin. In addition, barrier coatings may be utilized to control drug elution. These barrier coatings may vary in thickness.

Sirhan fails to disclose or even remotely suggest the invention claimed in amended claims 1 and 9. Specifically, Sirhan fails to disclose or even remotely suggest utilizing immiscible polymers to create both a chemical and physical barrier. Sirhan does teach using miscible polymers in different thicknesses to create just a physical barrier. In this way, a much lower profile device may be achieved. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claim 7 was rejected as being unpatentable over Sirhan in view of U.S. Patent 6,545,097 to Pinchuk et al. (Pinchuk). This rejection is respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness.

"To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d,488,20 USPQ2d 1438

(Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.”

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1074). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).”

The references, whether taken alone or in combination fail to disclose or even remotely suggest the subject matter of amended claims 1 and 9. While the rejection was directed to Claim 7 and Claim 7 was cancelled without prejudice, we shall direct our arguments to Claims 1 and 9. While it is true that Pinchuk discloses various polymers and there are plenty of polymers out there’re, there is simply no indication in either reference to combine immiscible polymers to create a chemical and physical barrier. This invention is not directed to combining similar or interchangeable polymers, of which there are many, but rather combining immiscible polymers. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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